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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,709	01/05/2004	Terrence M. Parve	028757-0142	2265
26371	7590	06/10/2004	EXAMINER	
FOLEY & LARDNER			NICOLAS, FREDERICK C	
777 EAST WISCONSIN AVENUE			ART UNIT	PAPER NUMBER
SUITE 3800				
MILWAUKEE, WI 53202-5308			3754	
DATE MAILED: 06/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/751,709	PARVE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Frederick C. Nicolas	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 January 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-42 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1-32 is/are allowed.

6) Claim(s) 33-42 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 33-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartilson et al. 3,499,588.

Bartilson et al. disclose a closure (10) for a container (12), which comprises a base including at least one opening (46) for dispensing a material from the container, a top portion (14) coupled to the base having at least one flap (20) movable about a hinge (22) between an open position for dispensing the material and a closed position for covering the opening (col. 4, ll. 16-60), a first elongate recess (16) and a second elongate recess (col. 4, ll. 16-25). A first projection (40) extending from a first side of the flap, a second projection (38) extending from a second side of the flap, so that the first projection is configured to fit at least partially within the first elongate recess and the second projection is configured to fit at least partially within the second elongate recess when the flap is in the closed position (col. 4, ll. 61-67), a spooning flap (col. 4, ll. 26-34).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartilson et al. 3,499,588 in view of Waterman 3,262,606.

Bartison et al. have taught all the features of the claimed invention except that a third projection extending downward from a free end of the flap. Waterman teaches the use of a first, second and third projections (25) from a flap (14), where the first and second projection are interconnected by the third projection as seen in Figure 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Waterman's teaching onto the flap of Bartilson et al. by adding a third projection as taught by Waterman in Figure 1 and (col. 3, ll. 1-73), in order to provide a peripheral skirt around the cover flap.

#### ***Allowable Subject Matter***

5. Claims 1-32 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to disclose or render obvious in an integrally-formed cover for a container in combination with the other claimed limitations of claim 1:

"the projection extending from the shaker flap comprises a tab; and a guide provided with the tab so that movement of the shaker flap from the open position to the closed position initially brings the guide into wedging interaction with an inner edge of the shaker opening and further movement of the shaker flap brings the tab into wedging interaction with the inner edge of the shaker opening; so that the shaker flap is

retained in the closed position by the wedging interaction of the tab against the inner edge of the shaker opening".

The prior art fails to disclose or render obvious in a closure for a container in combination with the other claimed limitations of claim 11:

"a guide extending from the projection; and a guide surface provided on the guide and configured to contact an edge of the opening when the flap is moved toward the closed position and configured to create a wedging interaction with the edge of the opening when the flap is moved further toward the closed position; so that the flap is retained in the closed position by the wedging interaction of the projection and the edge".

Further, the prior art fails to disclose or render obvious in a closure for a container in combination with the other claimed limitations of claim 23:

"a second projection extending from the first projection; and a guide surface provided on the second projection and configured to contact a portion of the base adjacent the opening when the flap is moved toward the closed position and configured to create a wedging interaction with the portion of the base adjacent the opening when the flap is moved further toward the closed position; so that the flap is retained in the closed position by the wedging interaction of at least one of the first projection and the second projection with the portion of the base adjacent the opening".

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hickman et al. RE37,634, Samz et al. 6,250,517, Hidding 4,369,901, Forsyth et al. 6,164,503, Daniello 5,601,213, Cribb, Jr. et al. 4,545,508, Vogel 6,464,113, Samz et al. 6,308,870, Robbins, III 5,509,582, Parve et al. 6,691,901, Foster 3,675,812, Weidman 4,936,494, Forsyth 5,330,082, Kohl 5,499,736, Martin 6,510,971, Vogel 6,460,718, Tucker 5,203,467, Forsyth et al. 5,048,730, Barr 3,140,019 and Beck et al. 5,219,100 disclose other types of closure for a container.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
June 9, 2004



6/9/04

Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754